

Commission for notices of hearings or of a particular hearing. With regard to rulemaking, the Commission shall convene at least one public hearing on any proposed rulemaking it approves for public review and comment. For any such hearing(s), notices need only be forwarded to the directors of the New York Register, the Pennsylvania bulletin, the Maryland Register and the FEDERAL REGISTER, and it is sufficient that this notice appear only in the FEDERAL REGISTER at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(d) *Standard public hearing procedure.*

(1) Hearings shall be open to the public. Participants to a public hearing shall be the project sponsor and the Commission staff. Participants may also be any person wishing to appear at the hearing and make an oral or written statement. Statements may favor or oppose the project/proposal, or may simply express a position without specifically favoring or opposing the project/proposal. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within a reasonable time thereafter as may be specified by the presiding officer, which time shall be not less than 10 days nor more than 30 days, except that a longer time may be specified if requested by a participant.

(2) Participants (except the project sponsor and the Commission staff) are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(e) *Representative capacity.* Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers, employees or by a designee of the governmental authority. Any individual intending to appear before the Commission in a representative capacity on behalf of a participant shall give the Commission written notice of the

nature and extent of his/her authorization to represent the person on whose behalf he/she intends to appear.

(f) *Description of project.* When notice of a public hearing is issued, there shall be available for inspection at the Commission offices all plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(g) *Presiding officer.* A public hearing shall be presided over by the Commission chair, the Executive Director, or any member or designee of the Commission. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

(h) *Transcript.* Whenever a project involving a diversion of water is the subject of a public hearing, and at all other times deemed necessary by the Commission or the Executive Director, a written transcript of the hearing shall be made. Other public hearings may be electronically recorded and a transcript made only if deemed necessary by the Executive Director or general counsel. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

(i) The Commission may conduct any public hearings in concert with any other agency of a member jurisdiction.

[71 FR 78589, Dec. 29, 2006, as amended at 74 FR 49813, Sept. 29, 2009]

§ 808.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by a final action or decision of the Commission or Executive Director on a project application or a records access determination made pursuant to Commission policy may file a written appeal requesting a hearing. In the case of a project approval or denial, such appeal shall be filed by a

project sponsor within 30 days of receipt of actual notice, and by all others within 30 days of publication of notice of the action taken on the project in the FEDERAL REGISTER. In the case of records access determinations, such appeal shall be filed with the Commission within 30 days of receipt of actual notice of the determination. Appeals filed later than 20 days prior to a regular Commission meeting will be considered at a subsequent Commission meeting. Appeals shall be filed on a form and in a manner prescribed by the Commission and the petitioner shall have 20 days from the date of filing to amend the appeal form.

(b) The appeal shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the appeal, and a statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request not filed on or before the applicable deadline established in paragraph (a) of this section hereof will be deemed untimely and such request for a hearing shall be considered denied unless the Commission, upon written request and for good cause shown, grants leave to make such filing *nunc pro tunc*; the standard applicable to what constitutes good cause shown being the standard applicable in analogous cases under Federal law. Receipt of requests for hearings pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Petitioners shall be limited to a single filing that shall set forth all matters and arguments in support thereof, including any ancillary motions or requests for relief. Issues not raised in this single filing shall be considered waived for purposes of the instant proceeding. Where the petitioner is appealing a final determination on a project application and is not the project sponsor, the petitioner shall serve a copy of the appeal upon the project sponsor within five days of its filing.

(e) If a hearing is granted, the Commission shall serve notice thereof upon

the petitioner and project sponsor and shall publish such notice in the FEDERAL REGISTER. The hearing shall not be held less than 20 days after publication of such notice. Hearings may be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the Commission may designate.

(1) The petitioner may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected member State. The decision of the Executive Director on the request for stay shall not be appealable to the Commission under this section and shall remain in full force and effect until the Commission acts on the appeal.

(2) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

(i) Irreparable harm to the petitioner.

(ii) The likelihood that the petitioner will prevail.

(f) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, the case involves a determination by the Executive Director or staff which requires further action by the Commission, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing, the party seeking such hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule.

(g) If a hearing is granted, the Commission shall refer the matter for hearing to be held in accordance with § 808.3, and appoint a hearing officer.

(h) *Intervention.* (1) A request for intervention may be filed with the Commission by persons other than the petitioner within 20 days of the publication of a notice of the granting of such hearing in the FEDERAL REGISTER. The request for intervention shall state

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the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance. The hearing officer(s) shall determine whether the person requesting intervention has standing in the matter that would justify their admission as an intervenor to the proceedings in accordance with Federal case law.

(2) Interveners shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses.

(i) Where a request for an appeal is made, the 90-day appeal period set forth in Section 3.10 (6) and Federal reservation (o) of the compact shall not commence until the Commission has either denied the request for or taken final action on an administrative appeal.

(j) Where the request for appeal relates to an action taken on a project, any hearing conducted pursuant to this section shall be convened in the general vicinity of the project location.

[71 FR 78589, Dec. 29, 2006, as amended at 74 FR 49813, Sept. 29, 2009; 75 FR 60622, Oct. 1, 2010]

§ 808.3 Hearings on administrative appeal.

(a) Unless otherwise agreed to by the Commission and the party requesting an administrative appeal under § 808.2 of this part, the following procedures shall govern the conduct of hearing on an administrative appeal.

(b) *Hearing procedure.* (1) The hearing officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearing, to set the location or venue of the hearing, to hold conferences for the settlement or simplification of issues and the stipulation of facts, to determine the proper parties to the hearing, to determine the scope of any discovery procedures, to delineate the hearing issues to be adjudicated, and to take notice of judicially cognizable facts and general, technical, or scientific facts. The hearing officer may, with the consent of the parties, conduct all or part of the hearing or related proceedings by telephone conference call or other electronic means.

(2) The hearing officer shall cause each witness to be sworn or to make affirmation.

(3) Any party to a hearing shall have the right to present evidence, to examine and cross-examine witnesses, submit rebuttal evidence, and to present summation and argument.

(4) When necessary, in order to prevent undue prolongation of the hearing, the hearing officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the extent of corroborative or cumulative testimony.

(5) The hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but the parties shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received provided it shall be founded upon competent, material evidence which is substantial in view of the entire record.

(6) Any party may appear and be heard in person or be represented by an attorney at law who shall file an appearance with the Commission.

(7) Briefs and oral argument may be required by the hearing officer and may be permitted upon request made prior to the close of the hearing by any party. They shall be part of the record unless otherwise ordered by the presiding officer.

(8) The hearing officer may, as he/she deems appropriate, issue subpoenas in the name of the Commission requiring the appearance of witnesses or the production of books, papers, and other documentary evidence for such hearings.

(9) A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the petitioner, or any other person who is a party to the appeal proceedings, or where deemed necessary by the Hearing Officer, the testimony shall be transcribed. In those instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The petitioner or other persons who desire copies shall obtain them from the stenographer at such price as may be agreed